



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोमवार, 21 मार्च, 2005/30 फाल्गुन, 1926

हिमाचल प्रदेश सरकार

“निर्वाचन विभाग”

अधिसूचना

शिमला-171009 3 मार्च, 2005

संख्या 3-16/2002-ई०एल० एन०—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/हि० प्र०-वि०स०/(2-2003)/2005, दिनांक 22 फरवरी, 2005 तदनुसार 3 फाल्गुन, 1926 (शक्) जिसमें 32-ऊना विधान सभा निर्वाचन क्षेत्र से विधान सभा निर्वाचन 2003 को प्रश्नगत करने सम्बन्धी निर्वाचन अर्जी संख्या-2 शीर्षक “श्री विरेन्द्र नाथ गौतम बनाम श्री सत पाल सिंह एवं अन्य” में हिमाचल प्रदेश उच्च न्यायालय स्थित शिमला, के तारीख 20 दिसम्बर, 2004 का निर्णय निहित है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,

मनीषा नन्दा,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग

22 फरवरी, 2005

तारीख—

3 फाल्गुन, 1926 (शक)

अधिसूचना

सं082/हि0 प्र0/(2-2003)/2005.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग 2003 की निर्वाचन अर्जी संख्या 2 में शिमला स्थित हिमाचल प्रदेश उच्च न्यायालय के तारीख 20 दिसम्बर 2004 के निर्णय को एतद्द्वारा प्रकाशित करता है।

आदेश से,

के0 अजय कुमार,
सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi-110001

22nd February, 2005

New Delhi—

3 Phalgun, 1926 (SAKA)

NOTIFICATION

No. 82 HP-LA/(2-03) 2005.—In pursuance of section 106 of the Representation of People Act, 1951 (43 of 1951), the Election Commission hereby publishes judgement dated 20th December, 2004 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 2 of 2003.

Copy of order/judgment/statement/passed/delivered/recorded on 20-12-2004 by the Hon'ble Mr. Justice K. C. Sood, Judge in El. P. 2/03, titled :

Shri Virender Nath Gautam son of Shri Surinder Nath, Resident of Vill. & P.O. Santokhgarh, Tehsil & District Una, H.P. ..Petitioner.

Versus

1. Shri Sat Pal Singh son of Shri Jagdev Singh, resident of Village Jalgran Tabba, Tehsil & District Una, H.P.
2. Shri Hem Raj son of Shri Zulfi Ram, resident of Village & P.O. Panoh, Tehsil & District Una, H.P.
3. Shri Khushhal Singh son of Shri Deva Singh, Resident of Prince Dairy, near Bhal Jawahar Singh Gurdwara, Una, District Una, H.P. .. Respondents.

Copy of Order/Judgment/Statement

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171001.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Election Petition No. 2 of 2003

Reserved on : 23-07-2004

Date of decision: 20-12-2004.

Virender Nath Gautam

.. Petitioner.

Versus

Sat Pal Singh & Others

.. Respondents.

Coram :

The Hon'ble Mr. Justice K. C. Sood, J.

Whether approved for reporting ? Yes

For the Petitioner : Mr. R. K. Gautam, Senior Advocate, assisted by Mr. Naresh K. Sood, and Mr. J. R. Poswal, Advocates.

For respondent No. 1 : Mr. S. P. Jain, Senior Advocate, assisted by Mr. R. K. Sharma, Mr. Sandeep Kaushik and Mr. Baldev Singh, Advocates.

K. C. Sood, J.

General Elections to the State Assembly of Himachal Pradesh were held on February 26, 2003. Respondent No. 1. Sat Pal Singh, hereinafter referred to as the "returned candidate" was declared elected from 32-Una Legislative Constituency. Petitioner Virender Nath Gautam hereinafter referred to as the "defeated candidate" was one of the candidates from this Constituency on the symbol of Indian National Congress. The returned candidate contested the election as candidate of Bhartiya Janta Party. Result of the election was declared on March 1, 2003. The returned candidate was declared elected by a margin of 51 votes. The returned candidate secured 27651 votes and the defeated candidate secured 27600 votes Respondent No. 2 Hem Raj and respondent No. 3 Khushal Singh were also candidates. They secured 1018 and 746 votes respectively.

The defeated candidate by this petition under sections 80 and 81 read with section 100 and 101 of the Representation of People Act, 1951, hereinafter referred to as "the Act", challenges the election of the returned candidate.

The election of the returned candidate is sought to be set aside and declared void with a prayer that the defeated candidate be declared as duly elected from 32-Una Legislative Assembly Constituency.

The election of the returned candidate is sought to be set aside on the grounds that 188 void votes were cast and counted in spite of the fact that all these votes were invalid/void votes as the margin of the votes between the defeated candidate and the returned candidate is only 51, therefore the result of the returned candidate has materially been affected.

The case of the defeated candidate as set out in the petition is (a) 37 votes of dead persons were cast during the poll and these 37 votes ought to have been "deducted" from

the total number of votes and not counted at all. The detail of the votes cast of dead person is:—

Sl. No.	Vote No.	Booth No.	Name	Father's/Husband's Name
1.	40	49	Shri Mela Ram	Shri Harjalu
2.	639	49	Shri Jeet Singh	Shri Hardev Singh
3.	581	49	Smt. Khelo Devi	Shri Lehnu Ram
4.	569	49	Shri Rulia Ram	Shri Hardev Singh
5.	269	49	Shri Ramesh Chand	Shri Prithi Singh
6.	589	49	Shri Mahant Singh	Shri Feena Ram
7.	754	49	Shri Tulsu Ram	Shri Ram Chand
8.	380	49	Sh. Joginder Pal	Shri Seeta Ram
9.	654	49	Sh. Pritam Singh	Shri Sham Singh
10.	496	49	Smt. Fula Devi	Shri Babu Ram
11.	415	49	Shri Mangat Ram	Shri Madu Ram
12.	539	49	Shri Balwant Singh	Shri Shiv Ram
13.	490	49	Shri Amar Singh	Shri Beli Ram
14.	425	49	Shri Gurdass Ram	Shri Raju Ram
15.	550	49	Smt. Pritmi Devi	Shri Malook Singh
16.	375	49	Smt. Bhagi Rani	Shri Kesri Dass
17.	538	49	Smt. Rumal Devi	Shri Balak Ram
18.	452	49	Shri Hoshiair Singh	Shri Udham Singh
19.	258	49	Shri Jhatu Ram	Shri Sada Ram
20.	442	49	Shri Raj Kumar	Shri Milkhi Ram
21.	313	49	Smt. Vanti Devi	Shri Kishan Singh
22.	49	49	Shri Pragat Singh	Shri Sahib Singh
23.	244	49	Shri Rabbal	Shri Chandu
24.	283	49	Shri Nand Lal	Shri Ram Ditta
25.	356	49	Shri Kewal Singh	Shri Jala Ram
26.	593	49	Shri Dilbag Singh	Shri Mahant Singh
27.	786	49	Shri Baldev Singh	Shri Fulla Singh
28.	536	48	Shri Jagdish	Shri Chandu Ram
29.	604	48	Smt. Ram Piari	Shri Nanak Chand
30.	810	48	Shri Jagdev Singh	Shri Lal Chand
31.	510	54	Smt. Kaushalaya Devi	Shri Bakhatwar Singh
32.	386	56	Shri Mangal Singh	Shri Matua Ram
33.	694	56	Shri Vipin Singh	Shri Avtar Singh
34.	202	39	Shri Rattan Chand	Shri Chanda Ram
35.	248	39	Shri Daulat Ram	Shri Penchu Ram
36.	285	39	Shri Milkhi Ram	Shri Achhru Ram
37.	113	39	Shri Mukesh Kumar	Shri Shamsher Singh

According to the petitioner, out of 37 votes. 30 such votes, were cast in Booth No. 48 & 49 which falls in the native village of the returned candidate i. e. village Jalgaon Tappa.

(b) 60 double were cast in violation of section 62 (4) of the Act and thus, 120 votes were counted though all these votes were void under section 62 (4) of the Representation of People Act and could not be counted. The detail of such votes has been given as follows:—

Vote No. 1	Booth No. 2	Name 3	Father/Husband's Name 4	Vote No. 5	Booth 6
856	40	Shri Raj Kumar	Shri Ishwar Dass	112	48
857	40	Smt. Poonam Kumari	Shri Raj Kumar	115	48
307	48	Shri Bal Krishan	Shri Ram Parkash	72	27
308	48	Smt. Asha Rani	Shri Bal Krishan	73	27
310	48	Shri Narinder Kumar	Shri Bal Krishan	74	27
311	48	Shri Sanjay	Shri Bal Krishan	76	27
312	48	Ms. Reena	Shri Bal Krishan	78	27
313	48	Smt. Veeran	Shri Narinder Kumar	75	27
314	48	Smt. Neeta	Shri Sanjay	77	27
224	48	Shri Tirlok	Shri Raja Ram	225	48
226	48	Smt. Shanti	Shri Trilok	227	48
801	48	Shri Shival Singh	Shri Amar Singh	620	49
802	48	Smt. Raj Kumari	Shri Shival Singh	621	49
803	48	Shri Surinder Singh	Shri Shival Singh	622	49
804	48	Smt. Saroj Devi	Shri Surinder Singh	623	49
805	48	Shri Charanjit Singh	Shri Shival Singh	624	49
806	48	Shri Sham Singh	Shri Shival Singh	625	49
632	48	Smt. Anshu	Shri Naresh Kumar	822	48
878	48	Smt. Anita Kumari	Shri Dharam Singh	518	48
835	49	Shri Dulbhag Singh	Shri Karam Chand	875	49
836	49	Smt. Sudesh Kumari	Shri Dilbag Singh	876	49
837	49	Shri Amrish Kumar	Shri Dilbag Singh	877	49
838	49	Shri Surinder Kumar	Shri Dalbah Singh	878	49
866	49	Smt. Kusum	Shri Jai Gopal	867	49
228	48	Shri Sanjiv	Shri Trilok	107	48
314	29	Shri Rakesh Singh	Shri Madan Singh	531	39
430	16	Shri Upinder Kumar	Shri Kanti Chand	1	32
431	16	Smt. Sudha Rani	Shri Upinder Kumar	2	32
35	40	Shri Amrik Singh	Shri Nasib Singh	724	49
36	40	Smt. Sunita Devi	Shri Armik Singh	725	49
42	40	Smt. Roshani Devi	Shri Harbans Singh	736	48
43	40	Shri Dilbag Singh	Shri Bansant Singh	737	48
44	40	Smt. Urmila Devi	Shri Dilbag Singh	738	48
48	40	Ms. Suman	Shri Harbans Singh	739	48
163	40	Smt. Shanti Devi	Shri Ashok Kumar	320	49
164	40	Shri Ashok Kumar	Shri Chokas Ram	319	49
202	40	Smt. Poonam	Shri Pawan Singh	939	40
205	40	Shri Jagmohan Singh	Shri Hardev Singh	120	48
226	40	Smt. Pooja	Shri Sanjeev Singh	938	40
241	40	Shri Mangal Singh	Shri Thandu Ram	340	49
242	40	Smt. Shanti Devi	Shri Mangal Singh	341	49
243	40	Shri Sanjeev Kumar	Shri Mangal Singh	342	49
360	40	Ms. Minakshi	Shri Harsem Lal	947	40
499	40	Shri Onkar Chand	Shri Shambhu	963	40

1	2	3	4	5	6
500	40	Smt. Rachhna	Shri Onkar Chand	964	40
501	40	Shri Vinod Kumar	Shri Onkar Chand	965	40
502	40	Shri Ashok Kumar	Shri Onkar Chand	966	40
503	40	Shri Raman Kumar	Shri Onkar Chand	967	40
553	40	Shri Nathu Ram	Shri Kanwar Man	994	40
554	40	Smt. Pushpa	Shri Nathu Ram	995	40
555	40	Ms. Manju	Shri Nathu Ram	996	40
852	40	Shri Gurmail Chand	Shri Ishwar Dass	108	48
853	40	Smt. Asha Rani	Shri Gurmail Chand	109	48
854	40	Shri Sukh Dev	Shri Ishwar Dass	110	48
855	40	Smt. Urmila	Shri Sukhdev	111	48
906	23	Smt. Prem Lata	Shri Rajender Kumar	335	28
907	23	Ms. Vandana	Shri Ram Swaroop	336	28
49	39	Shri Gurmeet	Shri Hari Ram	331	29
50	39	Smt. Rachna	Shri Gurmeet	332	29

(c) 19 persons cast their votes in two Constituencies i.e. Una-32. Constituency and Kul-lehar-33 Constituency. The detail of the voters who cast votes in two Constituencies is given in the petition as follows:—

Vote No.	Booth Nos.	Constituency No.	Name of Voter	Father/Husband's Name	Vote No.	Booth Nos.	Constituency
444	28	32	Smt. Shanti Devi	Shri Kishan Chand	709	76	33
445	28	32	Shri Som Nath	Shri Kishan Chand	708	76	33
446	28	32	Smt. Saroj Bala	Shri Soom Nath	710	76	33
447	28	32	Smt. Mamta Kumari	Shri Vijay Kumar	712	76	33
448	28	32	Shri Vinod Kumar	Shri Kishan Chand	713	76	33
449	28	32	Smt. Anju Bala	Shri Vinod Kumar	714	76	33
450	28	32	Shri Pawan Kumar	Shri Banta Ram	190	76	33
451	28	32	Smt. Parveen Kumari	Shri Pawan Kumar	191	76	33
452	28	32	Shri Ashwani Kumar	Shri Kishan Chand	715	76	33
453	28	32	Smt. Aruna Kumari	Shri Ashwani Kumar	716	76	33
454	28	32	Shri Rakesh Kumar	Shri Kishan Chand	718	76	33
455	28	32	Smt. Anju Bala	Shri Rakesh Kumar	717	76	33
456	28	32	Shri Ravinder Nath.	Shri Banta Ram	193	76	33
457	28	32	Smt. Rekha Rani	Shri Ravinder Nath	194	76	33
469	36	32	Shri Tarsem	Shri Ram Parkash	516	63	33
470	36	32	Smt. Kamlesh	Shri Tarsem	517	63	33
471	36	32	Shri Surinder	Shri Ram Parkash	518	63	33
472	36	32	Smt. Neelam	Shri Surinder	519	63	33
473	36	32	Shri Ajay	Shri Ram Parkash	520	63	33

According to the petitioner, most of the persons who cast their votes twice in same Constituency or different Constituency belong to the families, which are the supporters of the returned candidate and, therefore, the returned candidate is beneficiary of the void votes.

(d) The Returning Officer committed material irregularity while counting the postal ballots. Six persons were sent double postal ballot papers and therefore instead of six votes, 12 votes were cast by those 6 persons and all those six persons 12 votes being void, should not have been counted. The detail of the persons who cast their votes twice by ballot papers issued by the Returning Officer given in the petition is:—

Vote No.	Name	No.	Ind Vote No.
9	Shri Parveen Kumar	2684449	163
27	Shri Rajinder Kumar	3987258	134
28	Shri Narinder Kumar	3993288	132
52	Shri Rajesh Kumar	14938107	223
53	Smt. Mamta w/o Rajesh Kumar	14938107	224
177	Shri Vijay Pal Singh	6913281	217

According to the defeated candidate, the averments made by him make it clear that election of the returned candidate was materially affected because of the acceptance of the void and invalid votes and such void/invalid votes cast are excluded, the election of the "returned candidate" is definitely effected and the number of votes cast in favour of the petitioner shall be higher than the number of votes cast to respondent No. 1. It was only because of the wrong counting of votes that the returned candidate was declared elected.

The petitioner prays for the inspection of the polled votes in Booth No. 63 and 76 of Kulehar-33 Constituency and all the votes in 32-Una Constituency and recounting of all the polled votes after deducting 180 void/invalid votes.

In the written statement filed by the returned candidate, the following preliminary objections are taken:

"1. That in Election Petition, the petitioner had tried to canvas that in the electoral rolls, the names of certain dead persons were continuing and on the name of those dead persons votes were polled during the election. On the basis of these wrong electoral rolls and polls, the petitioner is challenging the election of the replying respondent. However, the alleged defect in preparation of electoral rolls cannot be canvassed in the election petition. The stage for challenging these electoral rolls is not by way of election petition, but the remedy was available somewhere else at the appropriate time. As such the present petition is not maintainable and liable to be dismissed.

2. That the petition has not been properly verified as provided under the law, as such, the same is liable to be dismissed. As much as, the petitioner has never stated regarding para No. 8 sub para 1 to 4 and 12 that he has not given the name of the persons from whom he has received the information. As such, the entire petition is liable to be dismissed.

3. That the allegations levelled in the petition are vague and the petition does not disclose the details of the material facts as required under the law. As such, the petition lacks in detailed material facts and particulars and is liable to be rejected.

4. That the Election Petition does not disclose sufficient ground for recounting. As such, it is liable to be dismissed. On the request of the petitioner, the Returning Officer conducted the recounting to the satisfaction of the petitioner on the spot. As such, now there is no justification and valid ground for directing recounting by this Hon'ble Court.
5. That now it has been finally settled by the Hon'ble Supreme Court that if the petitioner fails to raise the objection for recounting in writing and by giving proper and sufficient reasons, he cannot be later on allowed to agitate such objections in the Election Petition.
6. That if the inspection of the polled votes and recounting is allowed by this Hon'ble Court it would trinchh the secrecy of ballot papers, which would be in violation of Section 94 of the Representation of People's Act, therefore, this election petition is liable to be dismissed.
7. That there is no allegation against the replying respondent that he had any contribution for adding the names of dead persons in the electoral rolls or preparing the double votes. As such, the petition is not maintainable.
8. That the election petition does not disclose any cause of action as such liable to be dismissed.
9. That copy of the petition supplied to the replying respondent is not a true copy of the original, as such, the election petition is liable to be dismissed".

The case of the returned candidate is:

the allegations are wrong, vague and frivolous. The petitioner did not raise any objection when the electoral rolls were prepared nor at the time when the vote of any dead person was cast by any individual. According to the returned candidate, the defeated candidate intentionally got votes in the name of the dead persons polled in his favour. Even though the defeated candidate had details of these dead persons, he never raised any objection at the time of the revision/preparation of the electoral rolls or when the poll was held. The returned candidate denied that there was any improper reception, refusal or rejection of any vote. It is pleaded the petitioner has not stated material facts as to which of the votes out of these 188 votes are invalid and which are void. The defeated candidate, pleads returned candidate, having not raised any objection at the time of revision or preparation of the electoral rolls or when the votes were cast, cannot raise such objection at this stage. According to the returned candidate, the defeated candidate knowingly got the names of the dead persons included in the voters list and having lost the election, has made a grievance of it. The returned candidate emphasizes that it was a pre-planned Scheme of the defeated candidate to get the votes of dead persons polled in his favour and in case he lost the election, to file Election Petition on this ground. According to the returned candidate the plea of defeated candidate that out of 37 votes, 30 were cast in booth No. 40 and 49 falling in the native village of the returned candidate does not raise any presumption that these votes were polled in favour of the returned candidate.

So for casting of double votes, is concerned, it is pleaded that the defeated candidate never raised any objection at the time of preparation/revision of the voters lists nor at the time of polling or at the time of counting and therefore, the objection at this stage is not sustainable. In so far as the counting of postal ballot is concerned, it is pleaded that there was no irregularity in the counting nor such objection was raised at the time of counting.

The returned candidate having polled highest number of votes, has rightly been declared elected. There was no illegality or irregularity in the elections more so when the defeated

can didate failed to point out any such illegality or irregularity at appropriate time in the manner as prescribed in the Act and the rules framed there under :

The following issues were settled for trial :

1. Whether 188 invalid votes were wrongly accepted and counted by the Returning Officer, as alleged if so its effects? OPP.
2. If issue No. 1 is proved in affirmative, whether counting of such invalid votes materially affected the result of the returned candidate? Opp.
3. If issues No. 1 and 2 are proved in affirmative, whether election of the returned candidate is liable to be set aside and declared void ? OPP
4. If issues No. 1, 2 and 3 are proved in affirmative, whether the petitioner is entitled to be declared elected, as alleged ?
5. Whether the election petition does not disclose any cause of action OPD.
6. Whether the petition lacks in material facts and particulars, as contemplated under Section 83 of the Representation of People Act. OPD
7. Whether the petition has not been verified in accordance with the provisions of law and is liable to be dismissed ? OPD
8. Whether the petitioner is estopped from claiming recounting of votes ? OPD

Issues No. 5, 6 and 8 were directed to be tried as preliminary issues.

Learned counsel for the parties stipulated that no evidence is to be led by any of the parties on these three issues.

I heard Mr. R. K. Gautam. Sr. Advocate assisted by Mr. Naresh K. Sood and Mr. J. R. Poswal Advocates for the petitioner and Mr. S. P. Jain Senior Advocate, assisted by Mr. R. K. Sharma, Mr. Sandeep Kaushik and Mr. Baldev Singh, Advocates for respondent No. 1. My findings on the preliminary issues are :

Issue No. 5, 6 and 18 :

All these issues are taken up together being inter-linked and inter-dependent. The contention of the learned Senior Council for the returned candidate is that the petition does not disclose either cause of action or material facts on which the defeated candidate relies in support of the challenge made by him.

Chapter-II of the Act provides for presentation of the petitions Section 80 in this Chapter provides that an election petition challenging an election may be filed on one or more ground as specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within the time prescribed under Section 81 of the Act. Section 82 of the Act provides for joining of the respondents to the petition Section 83 (1) stipulates that election petition shall :

- (a) contain a concise statement of the material facts on which the petitioner relies.
- (b) set forth full particulars of any corrupt practice that the petitioner alleges, including full statement of names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for verification of the pleadings.

Proviso to sub-section (1) of Section 84 mandates that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in

support of the allegation of such corrupt practice and the particulars thereof. Section 86 lays down that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act.

Section 83 of the Act makes a distinction between material facts and material particulars as different consequences flow by non compliance if all material facts are not given or that material particulars are not given, it leads to incomplete cause of action.

The Apex Court in *Udhav Singh v. Madho Rao Scindia*, A. I. R. 1996 Supreme Court 744 ruled that failure to plead even of single material fact leads to an incomplete cause of action and therefore, incomplete allegation of such a charge are liable to be struck off under Order 6 Rule 16 of the Code of Civil Procedure and if petition is based only on those objections which suffers from lack of material facts, the petition is liable to be rejected in limine.

The Apex Court in *Azhar Hussain v. Rajiv Gandhi*, A. I. R. 1986 Supreme Court 1253, after having a look at Section 87 of the Act, which provides that every election petition is to be tried by the High Court, as nearly as may be, in accordance with the procedure applicable to the trial of suits and noticing that though Section 83 does not find a place in Section 86 of the Act, which authorizes dismissal of the election petition in certain contingencies, can act in exercise of the powers of the Court including order 6 rule 16 and order 7 rule 11-A.

Their Lordships in para 11 of the judgment observed.

"11 In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. The Court in *Samant's case* (1969) 3 SCC 238 (A. I. R. 1969 S. C. 1201) has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to corrupt practice is not an election petition at all. So also in *Udhav Singh's case* (1977) 1 S. C. C. 511 (A. I. R. 1977 S. C. 744) the law has been enunciated that all the primary facts which must be proved by a party to establish cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredient of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to close the petition with complete cause of action must be pleaded and failure to plead a single material fact would amount to disobedience the mandate of Section 83 (i) (a). An election petition therefore can be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

Emphasis given

It was contended in *Azhar Hussain* that power to reject an election petition summarily or at the threshold under the Code of Civil Procedure should not be exercised. It should not be done without recording evidence and this procedure should only be resorted to after trial of the election petition is concluded. This argument was repelled by their Lordships. It was held that if there is merit in the preliminary objection, then the Court must exercise its power

instead of keeping the sword of Damocles hanging over the returned candidate which serves no purpose. Their Lordships observed.

“To wind up the dialogue, to contend that the powers to dismiss or reject an election petition or pass appropriate orders should not be exercised except at the stage of final judgment after recording the evidence even if facts of the case warrant exercise of such powers, at the threshold is to contend that the Legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The Court cannot accede to such a proposition”.

The question what are material facts is no longer *res-integra*. Material facts are the facts which if established, would give petitioner the relief asked for.

The first allegation of the defeated candidate is that 37 votes of dead persons were cast during the polls and these 37 votes ought to have been “deducted” from the total number of votes and not counted at all. It is the case of the defeated candidate that 30 such votes out of 37 were cast in Booth No. 48 and 49 which falls in the native village of the respondent No. 1, the returned candidate. So far this allegation is concerned, there is not a word as to how many of these votes were cast in favour of the returned candidate and who cast those votes. Learned Senior Counsel for the returned candidate urged that the defeated candidate never raised any objection at the time of the polling and at this stage, it is not open to the defeated candidate to raise such an objection.

It may be noticed that section 62 of the Act provides that every person who for the time being is entered in the electoral roll of any Constituency shall be entitled to vote in that constituency. Thus all persons whose names are entered in the electoral rolls were entitled to vote in the Constituency. The defeated candidate does not say that he raised any objection when electoral rolls were prepared or revised under Section 21 of the Representation of People Act, 1950. Section 21 of 1950 Act provides that electoral roll in each constituency shall be prepared in the prescribed manner and this electoral roll is subject to revision as provided under sub-section (2) and (3) of Section 21. Section 22 provides an opportunity to get any entry in the electoral roll of the Constituency, if it is erroneous or defective, to be corrected Sub-section (c) of Section 22 specifically provides that on an application made to the Electoral registration Officer, any person can apply for the correction of the electoral roll on the ground that the name of any person should be deleted as that person is dead or has ceased to be ordinary resident of the Constituency or is otherwise not entitled to be registered in the roll. The defeated candidate does not say that he was not aware of the entries of the dead persons in the Electoral Roll which, in my view, is a material fact and ought have been pleaded.

This apart, Section 61 of the Act provides for procedure for preventing personation of electors. Section 46 of the Act gives a right to a contesting candidate to appoint Polling Agents of such candidate at each polling station as also the relief agents as may be prescribed at each Polling Station. Rule 13 of the Conduct of Election Rules, 1961, hereinafter referred to as “the rules”, provides that a candidate or his agent can appoint one agent and two relief agents as Polling Agents for each polling station as provided under Section 46 of the Act. Rule 36 of the rules stipulates that any polling agent may challenge the identity of a person claiming to be a particular elector by depositing a sum of rupees 2/- in cash with the Presiding Officer for each such challenge. Rule 35 contemplates that when an elector enters the polling station, his name and other particulars are to be checked in reference to the Electoral roll and then call out the serial number. It is at this point of time that challenge of identity can be made by polling agent of a candidate as provided under Section 36 of the rules. In the present case, there is not a word, a whisper that the polling agents or their relief agents, challenged the identity of the persons who allegedly voted for dead electors. If not challenged why? This too was a material fact which ought to have been pleaded to enable the elected candidate to meet the challenge of this ground. It is not the case

of the defeated candidate that he could not make challenge to the electors who impersonated or voted for dead persons because he was not aware of the entries of dead persons in the electoral rolls. The petitioner has given particulars of the dead persons for whom the votes were cast by impersonation, therefore, he must have known at the time of polling that these electors were dead. Assuming he was not aware, he does not say when and how he came to know that 37 voters whose names appear in the Electoral rolls and were cast by impersonation were dead. There is no allegation that the votes cast due to impersonation of the dead persons were managed by the returned candidate or his supporters or election agent. The allegation lacks material facts, noticed above, without which it is not possible for the elected candidate to meet the challenge. The material fact that votes of dead persons by impersonation were cast in favour of the returned candidate is also missing from the pleadings. The names of the persons who impersonated are not given in the pleadings. Non impleadment of these material facts renders the cause of action incomplete.

The Apex Court in **Satyanarain Dudhani v. Uday Kumar Singh and others, 1993 Supp. 2) SCC 82** took a view that secrecy of the ballot papers is sacrosanct and cannot be permitted to be tinkered lightly. An order of recount or inspection of ballot papers cannot be made as a matter of course. It is only when the Court is satisfied on the basis of the material facts pleaded in the petition and supported by contemporaneous evidence that recount can be ordered.

The view in **Satyanarain Dudhani** was reiterated in **Vadivelu v. Sundram and others, AIR 2000 Supreme Court 3230**. In **Vadivelu**, the allegation was that electoral roll contains names of dead persons and that some persons impersonated and cast votes in favour of the elected candidate. No details were given as to who committed such irregularity and how such votes were cast in favour of the elected candidate or in what manner their Lordships in Para 18 of the judgment observed.

“From the above pleadings it is evident that the appellant has not set forth material facts or particulars required for recount of votes. To justify his contention that there was irregularity or illegality in the counting, except making some general and bald allegations, no other details are given. Though an allegation is made that electoral roll contained the names of dead persons, that the 1st respondent took advantage of the same, and that some persons had impersonated and cast votes in his favour, no details are given as to who committed such irregularity. The appellant has also not mentioned as to how many such votes had been cast in favour of the 1st respondent. So also, the appellant has not alleged the nature of the illegality or irregularity said to have been committed by the Counting Officers. How and in what manner there was improper acceptance of invalid votes and improper rejection of valid votes, also is not explained by the appellant in short, the Election Petition is bereft of all details”.

Merely because the returned candidate has won by a narrow margin cannot be a reason for inspection of the ballot papers and recounting of votes.

In **Vadivelu**, the polling was held on 12-10-1996. The votes were counted on 14-10-1996. The elected candidate secured 1011 votes and the defeated candidate **Vadivelu** secured 1010 votes. The elected candidate won by one vote. In this background, the Apex Court said that as the pleadings were bereft of material facts. Therefore, the defeated candidate was not entitled to recount.

In **Hari Shankar Jain v. Sonia Gandhi (2001) 8 Supreme Court Cases 233**, the Apex Court reiterated that Section 83 (1) (a) of the Act mandates that an election petition shall

contain a concise statement of material facts on which the petitioner relies. Their Lordships observed in para 23 :

“By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908.”

1 of the judgment reads :

“23. Section 83 (1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression “cause of action” has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet (See *Samant N. Balkrishna v. George Gernandez Jitendra Bahadur Singh v. K. B. Bhatti*). Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V. S. Achuthanandan v. P. J. Francis* this Court has held on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead “material facts” is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition”.

(emphasis given)

In para 24 of the judgment, their Lordships ruled that it is the duty of the Court, to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose any cause of action. To enable the Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.

The next ground for challenge is improper receipt of void votes by the Returning Officer. The allegation is that 60 persons cast their votes twice in the same Constituency thereby 120 void votes have been counted and 19 persons cast their votes not only in Una-32 Constituency but also in Booth No. 76 and 63 of 33-Kutlchar Constituency. The defeated candidate has given details of double votes polled in paragraph 8 (ii) of the petition. Para 8 (iii) give details of 19 void votes which were polled in the Constituency in question as well as other Constituency.

The petitioner maintains pregnant silence when and how he came to know about the persons listed having cast their votes in different booths in the same Constituency and in two different constituencies. He does not say who impersonated for these persons in the

other booth. He also does not disclose if 19 votes which are cast in Una-32 Constituency and Kutlehar-33 Constituency are the same persons or some other persons who impersonated in other Constituency. Whether he asked for exclusion of the void votes from counting when the counting took place.

Rule 51 of the Rules clearly provides that the Returning Officer shall, at least one week before the date fixed for poll appoint the place or places where the counting of the votes will be done and the date and time at which the counting will commence and give notice of the same in writing to each of the candidate or his election agent. Rule 52 says that in terms of Section 47 of the Act, the candidates can appoint their Counting Agents not exceeding 16 at each of the places fixed for counting under Rule 51. Rule 53 provides for appointment of counter supervisor and counting assistant to assist the Returning Officer in counting. The petitioner does not say when precisely he came to know that 60 persons had cast their votes twice though in different booths and 19 persons cast their votes in two different Constituencies. Even though the pleading indicate that the defeated candidate was aware of the persons who cast their votes twice in the same constituency and who cast their vote twice in different constituencies. He does not disclose whether he or any of his counting agent(s) raised any objection at the relevant time regarding the counting of invalid or void votes. He does not disclose his source of information regarding cast of void votes which is a material fact.

The plea of the defeated candidate, as noticed earlier, in support of the challenge to the result of the returned candidate has materially been affected by improper reception of the votes which were void and, therefore, liable to be excluded. The defeated candidate does not say that these void votes were cast in favour of the returned candidate. What the defeated candidate says may be recapitulated again.

Similarly as many as 60 double votes have been cast which is violative of Section 62 (4) of the Representation of People Act, 1955.

He then goes to add :

"Again it is pertinent to mention that out of 120 votes mentioned above, 104 votes belong to Booth No. 48 & 49 which are in the native village of respondent No. 1".

The material fact that these void votes, which may provide cause of action, were cast in favour of the returned candidate is missing from the pleading.

The pleas in the petition are bereft of material facts. As already stated, the petition does not disclose how the defeated candidate obtained the information regarding 60 persons having voted twice or 19 persons having cast their vote in two Constituencies. The defeated candidate and his counting agents were present in the Counting Hall. Neither the defeated candidate nor his counting agent raised any objection nor asked for recounting. Only in a half hearted manner he alleges in para 7 that he approached the Returning Officer at the time of counting and brought to his notice. "it has come to his knowledge that many void votes have been cast and those should be deleted from the cast votes but the Returning Officer showed his helplessness to do so by saying that there is no such procedure in the Electronic Voter Machines and he could not do it".

Section 64 of the Act provides that in every election where poll is taken, votes shall be counted by or under the supervision or direction of the Returning Officer and each contesting candidate, his election agent and his counting agent, shall have a right to be present at the time of counting. Section 66 of the Act stipulates that after the completion of the counting, the returning officer shall, in the absence of any direction by the Election Commission to the contrary forthwith declare the result of the election in the manner provided by this

Act or the rules made thereunder Rule 63 of the Rules provides that after the completion of the counting, the returning officer shall record in the result sheet, in Form 20, the total number of votes polled by each candidate and announce the same. After such announcement, it is open to any candidate, his election agent or any of his counting agents to apply in writing to the Returning Officer for recounting the votes either wholly or in part stating the grounds on which he demands such recount. Neither the defeated candidate nor his election agent nor counting agent made any application in writing to the returning officer under rule 63 of the rules. The averment of the defeated candidate that he earlier asked the returning officer for recount, is nothing but a bald allegation unsupported by material facts.

In Azhar Hussain *supra*, an allegation was made that assistance of a Government servant was procured and obtained by the returned candidate, his agents and other persons with the consent of the returned candidate with a view to assist the furtherance of the prospects of the returned candidate's election. It was not mentioned in the election petition as to who procured or obtained the services of such Government servant or in what manner he obtained the services and what were the facts which went to show that it was with the consent of the elected candidate. In this background, Their Lordships observed.

"That the averments made in the petition do not show :

- (1) who has obtained or procured the assistance from Shri Beg,
- (2) how he had obtained or procured the assistance of Shri Beg, and
- (3) how it was said that it was with the consent of the respondent or his election agent. Nor is it shown which, if any, facts went to show that it was in furtherance of the prospects of the respondent's election. In the absence of material facts and particulars in regard to these aspects, the petition would not disclose the cause of action".

In the present case too, it is not disclosed who was instrumental in getting the 60 votes cast twice and 19 voters polled in two different constituencies. It is not the allegation that it was the returned candidate or his election agent who was instrumental in getting these sixty votes cast twice and 19 votes cast in two different constituencies. The mere allegation that out of 104 votes were cast in two booths in the native village of the returned candidate does not provide cause of action. The allegations are bereft of material facts. The cause of action remains incomplete unless, a nexus between the casting of these void votes and the returned candidate is alleged.

Part-IV of the Conduct of Election Rules, 1961 provides for voting in Parliamentary and Assembly Constituencies. Rule 37 provides that every elector with whose identity the residing officer or the polling officer, as the case may be, is satisfied shall allow his left forefinger to be inspected by the Presiding Officer or polling officer and an indelible ink mark to be put on it. There is no whisper whether the persons who cast their vote twice had mark of ink on their left forefinger. The defeated candidate does not plead whether or not the polling agent of the defeated candidate objected to such person voting at any of the booths, if not why? or such persons had removed the indelible ink mark or no mark was put in one of the booths on the left hand finger of these persons.

In the present case, as noticed earlier, the defeated candidate does not say how he came to know about the void votes having been polled. For this reason too, the cause of action remain incomplete. The allegation is bereft of material facts.

In Jitender Bahadur Singh vs Krishna Behari and others AIR 1970 Supreme Court 276. Their Lordships observed :

"In the instant case apart from giving certain figures whether true or imaginary, the petitioner has not disclosed in the petition the basis on which he arrived at those figures. His bald assertion that he got those figures from the counting agents of the congress nominee cannot afford the necessary basis. He did not say in the petition who those workers were and what is the basis of their information. It is not his case that they maintained any notes or that he examined their notes, if there were any. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, their must be such facts as to afford a basis for the allegations made in the petition".

In the present case, as observed earlier, there is no assertion in the election petition that who gave the information about the casting of void votes or how he came to know about void votes having been cast twice. The in escapable conclusion is that the facts stated in paragraph 8 (ii) and (iii) of the election petition are mere allegations not supported by material facts. The cause of action remains incomplete. The petition, in view of this, is not maintainable on these grounds.

The last ground of challenge as averred in sub-para (iv) of para 8 is that double postal ballots were sent to six persons. Therefore instead of six votes, twelve votes were cast by those six persons which resulted in twelve void votes having been polled and which were liable to be excluded from counting. The petitioner has given the detail of those persons including the vote number in this para. The allegation on the face of it is bereft of material facts. The plea of the defeated candidate is :

"It is submitted that for six persons named herein below, double postal ballot papers have been sent. Therefore, instead of six votes, twelve votes have been cast by six persons which has resulted in all the twelve votes as void and ought not to have been accounted for in the declaration of result being void votes".

The allegation indeed is presumptuous. The petitioner does not say that those six persons not only were issued double postal ballot papers but also cast double votes. The allegation merely is that six persons were sent double postal ballot papers. Merely because double ballot papers were sent to these six persons would not lead to the conclusion that in fact they cast their vote twice. The allegation is bereft of material fact that these persons sent back two ballot papers each, which were counted and therefore, it materially affected the result of the returned candidate. This apart, the fact that how and when the defeated candidate came to know about these six persons having been issued double postal ballot papers is not stated in the petition. This fact was material to enable the returned candidate to meet the allegation of the defeated candidate. The petitioner does not disclose if all those twelve ballot papers were counted in favour of the returned candidate, if not, how many of such ballot papers were counted in favour of the returned candidate which materially affected the result of the election so far returned candidate is concerned. In view of lack of material facts on this ground too, the cause of action is not complete.

The defeated candidate, it is interesting to note, in para 8(iii) pleads :

"It may not be out of place to mention here that most of the double voting in the same Constituency as well as in the different constituencies by families and these families are supporters of respondent No. 1, the returned candidate. It is therefore, clear that the returned candidate has been beneficiary of these void vote".

Even though the defeated candidate has taken a plea that most of the persons who cast their votes twice in the same constituency or different constituency or in other words belongs to the families which are the supporters of the returned candidate but he does not give the details or names of those families or the supporters though, apparent as it is, he knows the detail of those families who, according to him, cast their void votes. This was the material fact absence of which result in incomplete cause of action.

In **Hari Ram v. Hira Singh and others**, AIR 1984 Supreme Court 396 the Apex Court ruled that in the garb of seeking inspection, the defeated candidate should not be allowed to make a roving inquiry in order to fish out materials to set aside the election.

In **Bhabhi v. Dheo Govind** AIR 1975 SC, 2117, the Court observed:

“Thus on a close and careful consideration of the various authorities of this Court from time to time it is manifest that the following conditions are imperative before a Court can grant inspection, or for that matter sample inspection of the ballot papers:

- (1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;
- (2) That before inspection is allowed the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts.....”

The allegations made by the defeated candidate are vague, indefinite, bereft of material facts. It is not precisely stated as to how many void votes were cast in favour of the returned candidate and if such void votes were not counted in his favour, the defeated candidate would have been elected.

For the reasons recorded above, the election petition cannot be said to be in accordance with Section 83 (1)(a) of the Act being bereft of primary facts to complete the cause of action. The defect cannot be cured even by amendment of the petition.

To conclude, the petitioner has not disclosed all material facts and has withheld the same. In the absence of such facts, a roving inquiry cannot be permitted. There is no dispute that if para 8 sub-para (i) to (iv) are deleted, nothing survives in the election petition for putting the petition trial.

For the aforesaid reasons, para 8, sub-paras (i), (ii), (iii) and (iv) are struck down being vague, indefinite and lacking in material particulars. After striking down of the said paras, nothing survives in the election petition. The petition is rejected with costs quantified at rupees 5000/-.

The Registry shall immediately communicate the decision in the present petition to the Election Commissioner of India and the Speaker of the Himachal Pradesh Legislative

Assembly alongwith authentic copy of the judgment in accordance with the provisions of Section 103 of the Act.

December, 2004
(BM).

Seal.

Sd/-
(KULDIP CHAND SOOD),
Judge,
High Court of H.P.
Shimla.

By order,
(K. AJAYA KUMAR),
Secretary,
Election Commission of India.